

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JENNIFER KEITH aka JENNIFER DEEDRA
WILLIAMS,

Appellant.

No. 37909-1-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — A jury found Jennifer Keith guilty of third degree assault. RCW 9A.36.031(1)(a), (g). Keith appeals, arguing the State did not produce sufficient evidence that Keith intentionally assaulted the victim. Because the State's evidence supports the jury's finding that Keith intended to assault the victim, we affirm.

FACTS

On November 1, 2007, Deputy Matt Gray and Sergeant Jason Dracobly of the Mason County Sheriff's Office went to Keith's home to assist Chief Digrigoli of the Skokomish Department of Public Safety in arresting Keith for a tribal matter. Keith became hostile when the officers said she was under arrest, ordering them to leave her property immediately and saying that Digrigoli had a personal vendetta against her. The officers asked Keith to go to a private

bedroom to get dressed; she refused, and instead changed clothes in front of the officers. Keith insisted that she did not want to be arrested in the house in front of her children, so the officers offered to handcuff her on the front porch.

Outside, Chief Digrigoli stepped toward Keith to handcuff her. She jerked away and said, “I’m not going.” Report of Proceedings (RP) at 51. Deputy Gray then stepped forward to try to handcuff Keith. Keith responded with a “soccer field kick” at the deputy’s groin. RP at 51. Although Gray reflexively jumped back, the kick still grazed him. Gray pinned Keith to the ground in a headlock, where he felt Keith unsuccessfully attempting to bite him. The officers then handcuffed Keith. Throughout the arrest, Keith was argumentative and swore at the officers.

The State charged Keith with third degree assault. At trial, Deputy Gray and Sergeant Dracobly testified to the version of events described above. Gray also testified that he was sure Keith aimed the kick at his groin and intended to prevent her arrest by kicking him. In contrast, Keith testified that Chief Digrigoli grabbed one of her arms, Gray grabbed the other arm, and the officers spun her around, bringing all three of them to the ground. Keith stated that she did not remember kicking Gray, and she did not intend to do so.

The court instructed the jury that to convict Keith of third degree assault, it must find each of the following elements beyond a reasonable doubt:

- (1) That on or about the 1st day of November, 2007, the defendant intentionally assaulted Mason County Sheriff’s Office Deputy Matt Gray;
- (2) That the assault:
 - (a) was committed with intent to prevent or resist the lawful apprehension or detention of herself; or
 - (b) was upon a law enforcement officer who was performing his official duties at the time of the assault; and
- (3) That the acts occurred in the State of Washington.

Clerk's Papers (CP) at 34.

The jury found Keith guilty as charged, and Keith appeals.

DISCUSSION

Keith argues sufficient evidence did not support the intent element of third degree assault. We disagree.

Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found each element of the offense beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A sufficiency of the evidence challenge admits the truth of the State's evidence and inferences reasonably drawn therefrom. *Salinas*, 119 Wn.2d at 201. A reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (citing *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)).

The State charged Keith with violating two provisions of the third degree assault statute, which provide that a person is guilty of third degree assault if she:

(a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself or another person, assaults another; or

....

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault.

RCW 9A.36.031(1).

Although RCW 9A.36.031 does not have an express intent element, the common law definition of assault required that the State prove an intentional act constituting an assault.¹ The State was therefore required to prove that Keith intended to assault Deputy Gray. The trial court properly included this intent requirement in its elements instruction number 9.² Keith only challenges whether the State met its burden to prove this intent element.

Here, sufficient evidence supports a jury finding that Keith intentionally assaulted Deputy Gray. Keith acted with hostility toward the officers throughout her arrest. She ordered the officers to leave her property, defiantly changed clothes in front of them, and stated “I’m not going” when Chief Digrigoli first tried to handcuff her. RP at 51. Gray testified that Keith “turned to face me and pretty much did a soccer field kick right for my groin.” RP at 51. He also testified that Keith kicked him in a purposeful attempt to resist arrest and later attempted to bite

¹ See *State v. Brown*, 140 Wn.2d 456, 470, 998 P.2d 321 (2000) (“To obtain a conviction for assault under [RCW 9A.36.031(1)(g)], the State must prove that a defendant *intended to commit* and did commit an assault against another person.”) (emphasis added); *State v. Dukowitz*, 62 Wn. App. 418, 424, 814 P.2d 234 (1991) (“An assault is by definition an intentional act”), *review denied*, 118 Wn.2d 1031 (1992); 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 35.50, at 547 (3d ed. 2008) (WPIC) (“An assault is an intentional [touching] [or] [striking] [or] [cutting] [or] [shooting] of another person[, with unlawful force,] that is harmful or offensive.”).

² Instruction number 9 stated:

To convict the defendant of the crime of assault in the third degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 1st day of November, 2007, the defendant intentionally assaulted Mason County Sheriff’s Office Deputy Matt Gray;

(2) That the assault:

- (a) was committed with intent to prevent or resist the lawful apprehension or detention of herself; or
- (b) was upon a law enforcement officer who was performing his official duties at the time of the assault; and

(3) That the acts occurred in the State of Washington.

CP at 34. See 11 WPIC 35.23.02, at 496 (3d ed. 2008).

him when she was being pinned to the ground. Although Keith's testimony contradicts Deputy Gray's account of the events, credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Any rational juror could infer from the evidence that Keith intentionally kicked Gray. *See State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980) ("[T]he specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability.").

Because the evidence was sufficient to support the jury's verdict finding that Keith intentionally assaulted Deputy Gray as he performed his official duty in arresting her, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

HOUGHTON, P.J.

HUNT, J.